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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TK POWER, INC.,

No. C-04-5098 EMC

Plaintiff,

v.

TEXTRON, INC.,

Defendant.

**ORDER RESERVING RULING ON
TEXTRON'S MOTION TO DISMISS
DUE TO SPOILATION OF EVIDENCE
(Docket No. 170)**

With leave of Court, Textron has filed a Motion to Dismiss based on newly-discovered spoilation of evidence (docket no. 170). The critical issue is whether the software on charger #1462 received by Textron from TK Power for testing in 2006 had the same software as was available to Textron in 2003, or whether it contained more recent software developed by TK Power after the business relationship between the parties on this transaction terminated.

The Court cannot make this determination based on the declarations submitted. It reserves ruling pending receipt of evidence at trial.

IT IS SO ORDERED.

Dated: May 4, 2006


EDWARD M. CHEN
United States Magistrate Judge